

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

AARON SHELTON,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 05-3179-CV-S-RED-H
JOSEPH E. GUNJA, Warden,)	
)	
Respondent.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate Judge has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the Magistrate in which he continues to assert the allegations of his original petition. Petitioner also contends that he did not receive a specific instruction that prohibited the conduct with which he was charged.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the petition should be dismissed without prejudice because there was no due process violation in this case. Rather, a full review of the record indicates that petitioner's disciplinary hearing was in compliance with due process requirements, and that the sanctions that were imposed are authorized for the violation he was found to have committed. Despite petitioner's assertion that he was not

specifically put on notice regarding unauthorized use of the computer, the record clearly indicates that petitioner admitted at the time of the hearing that he did commit the offenses with which he was charged. Specifically, he admitted that he knew that he was not allowed to record music off of the computer and that he was not allowed to sign onto the computer as an administrator. It is clear from the record that there was some evidence to support the decision of the disciplinary officer. See Superintendent v. Hill, 472 U.S. 445, 455-56 (1985).

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, CONSIDERED and OVERRULED. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr
RICHARD E. DORR
United States District Judge

Date: November 16, 2006